IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
APPEAL NO.23 OF 1997
IN
WRIT PETITION NO.2959 OF 1987

Jhamnadas Shewakram Somai,
Indian Inhabitant residing at
Block No.`A'-19, Room No.109,
O.T.Section, Ulhasnagar .. Appeallnt
(Orig.Petitioner)

v/s.

1. The Maharashtra Housing and
Area Development Authority,
Griha Nirman Bhavan, 4th floor,
Bandra (West), Bombay-400 051.

2. Shri P.S.A.Sunderam,
Administrator,
Maharashtra Housing & Area
Development Authority, Griha
Nirman Bhavan, 4th floor, Bandra(W),
Bombay-400 051.

3. The State of Maharashtra

4. The President,
Maharashtra Housing & Area
Development Authority, having
his office at Griha Nirman Bhavan,
Bandra (East), Bombay-400 051.

5. The Vice President & Chief
Executive Officer, Maharashtra
Housing & Area Development
Authority having his office at
Griha Nirman Bhavan, Bandra(East),
Bombay-40 051.

Mr.G.K.Masand, Advocate for the appellants.

Mr.S.M.Dixit, Advocate for the respondent Nos.1,2,4 and 5.

CORAM : R.M. LODHA &
ANOOP V.MOHTA, JJ.

DATED : 13TH FEBRUARY, 2006.

ORAL JUDGMENT (Per R.M.Lodha, J.)

The appellant was unsuccessful before the learned Single Judge in challenging the order of compulsory retirement. He is in appeal before us.

2. The appellant joined the then Bombay Housing Board as Junior Engineer on 9.5.1958. He was promoted to the post of Deputy Engineer on 11.2.1970. By the Maharashtra Housing and Area Development Act, 1976, the Bombay Housing Board Act, 1948 was repealed and the petitioner became the employee of the Maharashtra Housing and Area Development Authority (MHADA). On 25.3.1980, he was promoted to the post of Executive Engineer on provisional basis for a period of six months. The trial period for promotion to the post of Executive Engineer was extended from time to time. It is pertinent to note here that pertaining to the years 1980-81 and 1981-82, the petitioner was communicated the remarks on 6.8.1982 intimating him that he requires guidance and has to be pushed.

3. MHADA framed the scheme for compulsory retirement entitled the Maharashtra Housing and Area Development Authority Employees' Compulsory Retirement Scheme, 1978 which interalia, provided for review of the cases of the employees at the age of 50 and 55 years. Under the said scheme, the petitioner's case was reviewed by the special review committee and the review committee formed the opinion that the petitioner

was not fit for continuance in service. In the light of the recommendations of the special review committee, order dated 28th May, 1987 was issued for compulsorily retiring the petitioner. The petitioner challenged the order of compulsory retirement before the appellate authority which came to be dismissed. Then the petitioner filed the writ petition before this court which was dismissed by the learned Single Judge holding that the service record of the petitioner indicated that he was below average. Against the order of the learned Single Judge passed on 31st August, 1996 in the writ petition No.2959 of 1987 filed by the petitioner, the present appeal has been preferred.

4. The criterion for review as provided in the scheme for compulsory retirement of the employees of MHADA at the age of 50/55 years, reads thus-

> "There shall be a single uniform criterion for determining the suitability of an employee of all classes of continuance in service beyond the age of fifty or fifty five years as the case may be viz. fitness for continuance in service. No employee should be held to be unfit for continuance in service, unless his record is below average or he is physically unfit or his integrity is found to be doubtful on the basis of strong prima facie evidence."

5. We called for the original service record of the appellant and that was placed before us. Upon perusal of the service record, we found that for the period from 1.4.1984 to 31.3.1985, the appellant's performance and achievement has been recorded "below average". His administrative ability including judgment, initiative and drive has been recorded as 'poor'. He has been assessed as an officer with very limited capacity and has been

advised to put in more work instead of depending on subordinates. For the period from 1.4.1985 to 31.3.1986, he is recorded average worker requiring more experience.

6. For the earlier period i.e., 1982-83, the following remarks are recorded:

(i) Slow in grasping;

(ii) Requires pushing;

(iii) Requires experience;

(iv) He requires pushing. His work is of average type;

(v) He should take initiative himself.

7. The aforesaid remarks were communicated to the petitioner.

8. Even before that period, he has been most of the time found `an average officer'.

9. The petitioner was holding the office of the Executive Engineer and if he has been found slow in grasp, lack of initiative, achievement `below average', initiative and drive `poor' and the officer with very limited capacity in his annual confidential reports, the conclusion arrived at by the special review committee that he was not fit for continuance in the employment as per the scheme for compulsory retirement, cannot be said to be based on no evidence or arbitrary. There is no allegation of action being malafide.

10. The legal position is no more res-integra that an order of compulsory retirement is not punishment and it implies no stigma nor any suggestion

of mis-behaviour. The principles of natural justice have no place in the context of an order of compulsory retirement. Even, the uncommunicated adverse remarks can be taken into consideration to judge the suitability of continuance of the employee under the scheme of compulsory retirement.

11. We, thus, find no merit in the appeal and it is dismissed with no order as to costs.

(R.M.LODHA, J.)

(ANOOP V. MOHTA, J.)